

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Staff Presentation Worksheet

Presentation Date: February 9, 2010 Time: 10:00 am Length: 15 minutes

Presentation Title: Ordinance amending civil penalty amounts

Department: DTD & County Counsel

Presenters: Cam Gilmour – DTD; Scott Caufield – DTD;
 Scott Ciecko – Office of County Counsel

POLICY QUESTION

In response to SB 915, should the Board of Commissioners amend the current civil penalty amounts for all code violations, or should the Board create a separate schedule of civil penalties solely for building code violations.

ISSUE & BACKGROUND

In 2009, the Oregon Legislature passed SB 915 providing (amongst other things) that local governments administering building inspection programs shall not assess civil penalties for building code violations in amounts that exceed the limits set forth in ORS 455.895. Clackamas County administers a building inspection program and therefore is now subject to the limitations on civil penalty amounts set forth in State statute.

The current schedule of civil penalties in Clackamas County is found in Section 2.07.120 of the County Code and is applicable to all code violations. That section provides maximum civil penalties as follows: \$3,500 for a Priority 1 violation; \$2,500 for a Priority 2 violation; \$1,500 for a Priority 3 violation; and \$1,000 for a Priority 4 violation. Additionally, Section 9.02.330 of the County Code provides that each day a building code violation exists is a separate offense.

ORS 455.895, however, indicates that the maximum penalty for a building code violation is \$1,000 for each day of a continuing offense. As the current County Code allows for penalties greater than \$1,000 per day for Priority 1, 2, and 3 violations, it appears that the code is now in conflict with State law.

QUESTION PRESENTED FOR CONSIDERATION

Will the Board of County Commissioners amend the schedule of civil penalties for code violations in order to comply with the requirements of SB 915?

OPTIONS AVAILABLE

1. The County could reduce the maximum civil penalty amounts for *all* code violations so that the amounts will not exceed \$1,000 per day for any continuing violation;
2. The County could create a separate schedule of civil penalties applicable only to *building code* violations in which maximum amounts would not exceed \$1,000 per day for continuing violations.

RECOMMENDATIONS

DTD respectfully recommends that the Board adopt option number one above. Although this option will significantly reduce the maximum penalty amounts that can be imposed by the County hearings officer, the amounts can be imposed for each day that a violation exists and therefore can quickly add up to large amounts that will be effective in achieving compliance with most individuals.

Furthermore, in the rare case that the monetary penalty is not effective in gaining compliance, there remains the option of filing an action in Circuit Court where the County can seek injunctive or other relief. The County's ability to utilize the Circuit Court to correct code violations is not affected by SB 915.

Lastly, DTD desires to maintain uniformity in penalty amounts based on the violation priority. Option two above would result in penalty amounts for Priority 1 building code violations being less than one-third of the amount of other Priority 1 violations. Despite the fact there is a State law mandate, this discrepancy would be difficult to explain to the general public considering building code violations are capable of creating substantial risks to health, life, and safety.

As a house-keeping matter, County Counsel additionally recommends that the schedule of civil penalties be removed from the County Code entirely, and maintained in Appendix B to the Code as well as the Operational Policies of DTD. This change will be consistent with other chapters of the County Code, see e.g. Chapter 6 – Public Safety. The change will also allow penalty amounts to be changed with a resolution of the Board rather than an ordinance and a formal code amendment.

In order to make the recommended changes, the Board will need to pass an ordinance amending Section 2.07.120 of the County Code that removes the civil penalty amounts from the section. The Board will also need to pass one resolution amending Appendix B to reflect the new civil penalty amounts, and board order amending DTD's Operational Policies to also include the new amounts.

Upon receiving direction from the Board on this matter, the documents discussed above will be drafted and submitted for further consideration.

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval  _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Anja Mundy at 503-655-8362.